Supreme Court, U.S.
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No. 91-40

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

NICHOLAS E. BRUSCO,

Petitioner,

vs.

STATE OF NEW YORK DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the United States Supreme Court lacks jurisdiction over this matter because the petitioner failed to exhaust his State court remedies, not having moved for leave to appeal to the New York Court of Appeals after his appeal as of right was dismissed.

2. Whether the New York State Court of Appeals properly dismissed, *sua sponte*, petitioner's appeal upon the ground that there is no substantial constitutional question.

3. Whether the Appellate Division, First Department, of the Supreme Court of the State of New York properly rejected petitioner's contention that the New York Rent Stabilization laws, by limiting vacancy rent increases, constitutes a taking of property without just compensation.

4. Whether the state, in the exercise of its police power to protect the public welfare, in the face of an acute housing shortage, by regulating rents, including vacancy rents in residential dwellings in order to prevent the exaction of unjust, unreasonable and oppressive rents, has enacted a rent stabilization plan that is rationally related to a legitimate state interest.

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BRIEF FOR RESPONDENT IN OPPOSITION

ADDITIONAL STATUTES INVOLVED

1. 28 U.S.C. §1257(a) [See Appendix].

2. N.Y. Civ. Prac. Law and Rules §§5601, 5602 and 5514(a) [See Appendix].

3. Rent Control Law, N.Y.C. Admin. Code, §§26-401, et seq. (McKinneys Unconsol. Laws)

4. Rent Stabilization Law, N.Y.C. Admin. Code, §§26-501, et seq. (McKinneys Unconsol. Laws)

5. Omnibus Housing Act of 1983, Chapter 403 of the N.Y. Laws of 1983.

6. Chap. 167 of the N.Y. Laws of 1991 [Appendix].

7. 1991 N.Y.C. Local Law 20 [See Appendix].

JURISDICTION

It appears that this Court lacks jurisdiction over this matter. Petitioner sought judicial review of an administrative determination which found that he had overcharged a tenant. The determination was upheld in both the New York Supreme Court and the Appellate Division of the New York Supreme Court. Petitioner then took an appeal as of right to the New York Court of Appeals. That appeal was dismissed for want of a substantial constitutional question. He did not subsequently seek discretionary review by the New York Court of Appeals after his appeal as of right was dismissed, although such relief was still available.[1] *See*, N.Y. Civ. Prac. Law and Rules §§5601, 5602 and 5514(a); T.R. Newman, *New York Appellate Practice*, p. 11-15, n. 49 (1990).

The New York Court of Appeals can dismiss an appeal as of right brought on constitutional grounds yet grant leave to appeal to consider the constitutionality of a law. For example, in *Glenn Mohawk Milk Association v. Wickham*, 21 N.Y.2d 719, 287 N.Y.S.2d 683 (1967), 24 N.Y.2d 963, 250 N.E.2d 77, 302 N.Y.S.2d 593 (decided on other grounds), *remittitur amended*, 25 N.Y.2d 887, 251 N.E.2d 143, 304 N.Y.S.2d 4 (1969), *cert. denied*, 396 U.S.1004, 90 S.Ct. 556, 24 L.Ed.2d 496 (1970), the court dismissed an appeal as of right "upon the ground that no substantial question directly involving the construction of the Constitution of this State or of the United States was raised in

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[1] It should be noted that the petitioner, though *pro se*, is an attorney.

the courts below", but nevertheless granted motions for leave to appeal and directed the parties to address the constitutionality of a section of the Agriculture and Markets Law.

Pursuant to 28 U.S.C. §1257(a), review is limited to final judgments rendered by the highest court of a State. In the case at bar, petitioner, not having sought discretionary review by the New York of Appeals after his appeal as of right was dismissed, failed to exhaust his State court remedies. Thus, the judgment for which review is sought in this Court is not a final judgment of the highest court of the State.

The circumstances in the case at bar are virtually identical to those occurring in other cases in which petitions for writs of certiorari were denied by this Court for want of jurisdiction. In *Matthews v. Huwe*, 269 U.S. 262, 46 S.Ct. 108, 70 L.Ed.266 (1925), the Ohio Supreme Court dismissed an appeal taken as of right on the ground that the record presented no constitutional question. However, because a subsequent writ of error was made, not to the Ohio Supreme Court, but to an inferior court, the petition for a writ was denied. In the case at bar, no subsequent application was made. In *Stratton v. Stratton*, 239 U.S. 55, 33 S.Ct. 26, 60 L.Ed. 142 (1915), a petition for writ was dismissed because the discretionary review of the Ohio Supreme Court was not sought. The Court noted that:

> ...the practice for years has been in the various states where discretionary power to review exists in the highest court of the state, to invoke the exercise of such discretion in order that, upon the refusal to do so, there might be no question concerning the right to review in this court.

In *Gotthilf v. Sills*, 375 U.S. 79, 84 S.Ct. 187, 11 L.Ed.2d 159 (1963), a body execution against the debtor was affirmed by the

Appellate Division of the New York Supreme Court. The debtor's motion in the New York Court of Appeals for leave to appeal, and his appeal to that Court as of right, were dismissed on the ground that the order was not final. A writ of certiorari granted by the U.S. Supreme Court was dismissed as improvidently granted because the judgment was not a judgment of the highest court of the State, as the debtor did not apply to the Appellate Division for leave to appeal upon certified questions, as required by New York law. *See also, McMaster v. Gould*, 276 U.S. 284, 48 S.Ct. 299, 72 L.Ed. 574 (1928), *Mullen v. Western Union Beef Co.*, 173 U.S. 116, 19 S.Ct. 404, 43 L.Ed. 635 (1899), *Fisher v. Perkins*, 122 U.S. 522, 7 S.Ct. 1227, 30 L.Ed. 1192 (1887).

The decision in *R.J. Reynolds Tobacco Co. v. Durham County*, 479 U.S. 130, 107 S.Ct. 499, 93 L.Ed.2d 449 (1986), is not contrary. In *R.J. Reynolds*, the North Carolina Supreme Court dismissed an appeal as of right for "lack of a substantial federal constitutional question." This Court entertained jurisdiction because it considered the dismissal by the North Carolina Supreme Court to be on the merits rather than for lack of jurisdiction. 479 U.S. at 138. However, in that case there appears to have been no consideration as to whether the petitioner had exhausted other jurisdictional avenues of appeal to the North Carolina Supreme Court before have come before this Court. In the case at bar, there was clearly another avenue of appeal to the highest court in the State which was not utilized by the petitioner. Having failed to do so, he did not exhaust his State court remedies. There being no final judgment of the highest court of the State, the United States Supreme Court lacks jurisdiction over the case.

STATEMENT OF THE CASE

Respondent adopts the statement of the case as presented in the opinion of the Supreme Court of the State of New York, County of New York, Helen Freedman, J., dated

September 22, 1989 (Petitioner's Appendix "C"), and asserts that the Petitioner's Statement of the Case is inaccurate in the following respect:

Petitioner is correct in stating that there are two separate systems of regulation in New York City, rent control and rent stabilization, but does not properly represent their structure. The Rent Control Law, N.Y.C. Admin. Code, §§26-401, et seq. (McKinneys Unconsol. Laws), applies generally to housing accommodations constructed prior to February 1, 1947, which have not become decontrolled by reason of a vacancy occurring after June 30, 1971. The Rent Stabilization Law, N.Y.C. Admin. Code, §§26-501, et seq. (McKinneys Unconsol. Laws), applies generally to buildings containing six or more housing accommodations constructed between February 1, 1947 and January 1, 1974, and to accommodations which were previously subject to the Rent Control Law but were decontrolled upon vacancy. With some exceptions, housing constructed after January 1, 1974, the effective date of the Emergency Tenant Protection Act, McKinneys Unconsol. Laws, §8621, et seq., are not subject to either rent control or rent stabilization. Both systems have been administered by the Respondent since April 1, 1984, pursuant to the Omnibus Housing Act of 1983, Chapter 403 of the N.Y. Laws of 1983.[2]

Under the rent control system, rents can only be increased pursuant to approval of the rent agency upon application by the landlord. The Maximum Base Rent program permits rent increases of up to 7.5 percent annually, provided that a landlord meets various statutory and regulatory criteria. In addition to the increases allowed under the Maximum Base Rent program, rent increases may be granted for such items as major capital improvements or hardship.

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[2] The Respondent also administers two parallel rent regulatory systems in localities outside New York City.

Tenants in rent controlled apartments are considered to be statutory tenants whose tenancies are protected without the need for leases. Rent increases are not dependent on the existence of leases. Upon vacancy decontrol, a housing accommodation is no longer subject to the rent limits of the Rent Control Law.

Under the rent stabilization system, tenants are given the option of one or two year renewal leases. Rent increases other than for such items as major capital improvements or hardship, can only occur upon a lease renewal. The allowable city-wide rent increases are established annually by the Rent Guidelines Board, after the preparation of a study and public hearings. In setting allowable lease renewal rent increases, the Board is required to consider the economic condition of the real estate industry, including factors such as real estate taxes, sewer and water rates, operating maintenance costs, costs and availability of financing, over-all supply of housing accommodations and vacancy rates, cost of living indices, and such other data as may be available and relevant. *See*, N.Y.C. Admin. Code §26-510(b). The Rent Guidelines Board is also empowered to determine what rent increases are allowable for a vacancy rental. *See*, N.Y.C. Admin. Code §26-510(d).

Petitioner incorrectly states that the vacancy rent for an apartment already rent stabilized is limited to the rent charged to the prior tenant plus the applicable vacancy increase in effect at the time. (Pet. 7) In fact, an owner is generally allowed both the lease renewal increase in effect at the time, and the vacancy increase then in effect.

The allowable vacancy increases set by the Rent Guidelines Board do not apply to the initial rent of an apartment first becoming subject to the Rent Stabilization Law upon a rental after vacancy decontrol. A landlord may rent to the first rent stabilized tenant at a market rent, subject to the tenant's filing a Fair Market Rent Appeal within ninety days of

receiving proper notice from the landlord. If the tenant files a Fair Market Rent Appeal the rent agency establishes the initial rent stabilized rent on the basis of a combination of comparable rents provided by the landlord and a special guideline set by the Rent Guidelines Board. *See*, N.Y.C. Admin. Code §26-513.

REASONS FOR DENYING THE WRIT

The New York Court of Appeals properly dismissed petitioner's appeal *sua sponte* on the ground that no substantial constitutional question is directly involved. The imposition of limitations on vacancy rents under the rent stabilization program in New York City and New York State is nothing more than a standard form of rent regulation which has long been upheld as constitutional.

In *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982), this Court expressly declared that States have broad power to regulate landlord-tenant relationships. The Court, while finding a New York statute which required a landlord to permit cable television installations to constitute a taking under the physical occupation rule, nevertheless stated:

> Finally, we do not agree with appellees that application of the physical occupation rule will have dire consequences for the government's power to adjust landlord-tenant relationships. This Court has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails.

458 U.S. 419 at 440.

Through the years, federal, state and local governments have, in response to significant housing shortages, enacted legislation declaring the existence of a serious public emergency and restricting the ability of landlords to raise rents and evict tenants. Both this Court and the New York Court of Appeals have consistently upheld these restrictions and rejected claims that such measures were constitutionally infirm. See, e.g., *Bowles v. Willingham*, 321 U.S. 503, 64 S.Ct. 641, 88 L.Ed. 892 (1944); *Pennell v. City of San Jose*, 485 U.S. 1, 108 S.Ct. 849, 99 L.Ed.2d 1 (1988); *Teeval Co. v. Stern*, 301 N.Y. 346 (1950), *cert. denied*, 340 U.S. 876, 71 S.Ct. 124, 95 L.Ed. 637; *8200 Realty Corp. v. Lindsay*, 27 N.Y.2d 124, 313 NYS2d 733, *appeal dismissed*, 400 U.S. 962 (1970); *Benson Realty Corp. v. Beame*, 50 N.Y.2d 994, 409 N.E.2d 948, 431 N.Y.S.2d 475 (1980), *appeal dismissed, sub nom., Benson Realty Corp. v. Koch*, 449 U.S. 1119, 67 L.Ed.2d 106, 101 S.Ct. 933.

In *Pennell v. City of San Jose*, *supra*, a rent control provision which allows consideration of the tenant's hardship in fixing a reasonable rent was found to be constitutional. This Court reiterated the constitutionality of government intervention in the marketplace to regulate rates and prices where there is a discrepancy between supply and demand, or where they are artificially inflated as a result of the existence of a monopoly or near monopoly, 485 U.S. 1 at 11. The Court further noted that rent laws are not per se takings:

> And in *FCC v. Florida Power Corp.*, 480 US 245, 94 L. Ed 2d 282, 107 SCt 1107 (1987), we stated that "statutes regulating the economic relations of landlords and tenants are not per se takings." Id., at 252, 94 L Ed 2d 282, 107 S ct 1107. Despite amici's urgings, we see no need to reconsider the constitutionality of rent control per se.

485 U.S. 1 at 12, n. 6.

The long line of cases upholding the constitutionality of rent regulation has not drawn any distinction between limitations on vacancy rents and limits on rent increases for tenants in occupancy. Indeed, it is apparent that many of those cases have implicitly, if not explicitly, approved of limitations on vacancy rents. For example in, *Bowles v. Willingham*, 321 US 503, 64 S.Ct. 641, 99 L.Ed. 892 (1944), this Court found constitutional the establishment of maximum rents under the Federal wartime price regulation program, including rents in accommodations rented after a certain date. In *Teeval v. Co. v. Stern*, 301 N.Y. 346, 93 N.E.2d 884 (1950), *cert. denied*, 340 U.S. 876, 71 S.Ct. 124, 95 L.Ed. 637, the New York State rent control law, which not only froze rents, including vacancy rents, but rolled rents back to those in effect on an earlier date, was upheld as constitutional. And in *I.L.F.Y. Co. v. Temporary State Housing Rent Commission*, 10 N.Y.2d 263, 219 N.Y.S.2d 249 (1961), *app. dismd.*, 369 U.S. 795, the court affirmed the constitutionality of the setting of maximum rents under New York's rent control laws.

In the case at bar, petitioner's challenge to the constitutionality of limits on vacancy rents rests solely on the claim that these limits do not advance a legitimate state interest. This claim is completely unfounded.

A law or regulation will not be held to effect a regulatory taking so long as (1) it is "reasonably necessary to the effectuation of a substantial government purpose", or it "substantially advances legitimate state interests", and (2) does not "deny an owner economically viable use of his land." *See, Keystone Bituminous Coal Association v. DeBenedictis*, 480 U.S. 470 at 485, 107 S.Ct. 1232 at 1241, 94 L.Ed.2d 472 (1987); *Agins v. Tiburon*, 447 U.S. 255 at 260, 100 S.Ct. 2138 at 2141, 65 L.Ed.2d (1980); *Penn Central Transportation Company v. City of New York*, 438 U.S. 104 at 127, 98 S.Ct. 2646 at 2660 (1978). Both factors have been interpreted in a manner which gives great deference to governmental action. This Court has

stated that "a broad range of governmental purposes and regulations satisfies" the state interest requirement. See, *Nollan v. California Coastal Commission*, 483 U.S. 825 at 835, 107 S.Ct. 3141 at 3147, 97 L.Ed.2d 677 (1987). Landlord-tenant relations have been particularly singled out as a field in which great deference is accorded to governmental regulation. *See, Loretto v. Teleprompter Manhattan CATV Corp., supra*, 458 U.S. at 440; *Pennell v. City of San Jose, supra*, 485 U.S. at 12, n.6.

In *Pennell v. City of San Jose, supra*, 485 U.S. at 12, 13, 14, n.8, this Court identified the "preven[tion of] excessive and unreasonable rent increases" and the "protection of consumer welfare" by limiting rents and "reducing the costs of dislocation" as legitimate public purposes.

The legislative findings contained in §8622 of the Emergency Tenant Protection Act of 1974, McKinneys Uncon-sol. Laws, clearly enunciate a legitimate purpose underlying the regulation of rents, including vacancy rents. The findings state in relevant part:

> The legislature hereby finds and declares that a serious public emergency continues to exist in the housing of a considerable number of persons in the state of New York which emergency was at its inception created by war, the effects of war and the aftermath of hostilities, that such emergency necessitated the intervention of federal, state and local government in order to prevent speculative, unwarranted and abnormal increases in rents; that there continues to exist in many areas of the state an acute shortage of housing accommodations caused by continued high demand...; that a substantial number of persons residing in housing not presently subject to the provisions of the emergency housing rent

> control law or the local emergency housing rent control act are being charged excessive and unwarranted rents and rent increases; that preventive action by the legislature continues to be imperative in order to prevent exaction of unjust, unreasonable and oppressive rents and rental agreements and to forestall profiteering, speculation and other disruptive practices tending to produce threats to the health, safety and general welfare...

The prevention of "unjust, unreasonable and oppressive rents and rental agreements" is plainly a legitimate state purpose, and the imposition of limits on rents, including vacancy rents, is an obvious means of advancing that legitimate purpose.

Petitioner concedes that the limitation of rents for tenants in occupancy, both before and after a vacancy, are constitutional, but fails to show how vacancy rents might be constitutionally distinguishable. His assertions about apartment warehousing and broker's fees are nothing more than self-serving statements about complex phenomena which have not been tested in this litigation, and which are not determinative of the constitutional question.

The reasonableness of the legislative choice is not determined by whether or not the choice was the best or most suitable available. Nor is it necessary to show that the method chosen invariably produces the ideal result for all tenants or all landlords in all cases. The place for determining the weight and significance of the many elements to be considered is the legislature, not the judiciary. *See, e.g., East New York Savings Bank v. Hahn*, 326 U.S.230, 234, 66 S.Ct. 69, 90 L.Ed.34 (1945). In any event, the regulatory limitations on rents, whether for vacant or occupied apartments, have a rational basis and prescribe a reasonable method. It is incomprehensible that

rent regulation as a whole is constitutional but that limits on vacancy rent increases are not.

Moreover, the fact that the rent regulation system grew out of the wartime emergency of the 1940s does not nullify its presently legitimate purpose as found by the State Legislature. In accordance with the requirements of the statutory scheme, the New York State legislature and New York City Council, every two to three years, have given renewed consideration to the continued need for rent regulation by reason of the extreme shortage of housing, and have extended the period of rent stabilization only after housing surveys, public hearings, and other legislative consideration. The most recent extension occurred earlier this year; statewide legislation having been extended to June 15, 1993, by virtue of Chapter 167 of the N.Y. Laws of 1991; and rent stabilization in New York City extended to April 1, 1994, by virtue of the N.Y.C. Local Law 20 of 1991.

In *Benson Realty Corp. v. Beame*, 50 N.Y.2d 994, 409 N.E.2d 948, 431 N.Y.S.2d 475 (1980), *appeal dismissed, sub nom., Benson Realty Corp. v. Koch*, 449 U.S. 1119, 67 L.Ed.2d 106, 101 S.Ct. 933, the New York Court of Appeals, noting that New York's rent laws are subject to periodic re-examination, found as follows:

> Plaintiffs attack the New York City Rent Control Law on the grounds that there is no longer an emergency after 36 years, that as applied it is confiscatory, and that in any event there has been such a failure of administration of law as to mandate is being declared unconstitutional. The need for rent control has been re-examined legislatively at intervals of three years, the most recent such review being the March 27, 1980 Report of the New York State Temporary Commission on Rental Housing, which conclud-

> ed that "There is a need for continuing a form of rent regulation in those jurisdictions in which housing accommodations are presently subject to rent control or rent stabilization." Whether there is need for controls is matter for legislative determination in the first instance. The presumption of a factual basis for that determination is not overcome by mere passage of time, nor have plaintiffs, whose affidavits concentrate on the effect of controls on property owners, presented evidence to demonstrate beyond a reasonable doubt that there is no factual basis.

Nothing has been shown by petitioner to warrant a re-examination of well settled principles. Petitioner has not raised a substantial constitutional question. He has not shown, and indeed cannot show, that the Rent Stabilization Law as applied to limiting vacancy rents is unconstitutional. Because the courts below correctly found that limits on vacancy rents are constitutional, the petition should be denied.

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be denied.

Dated: New York, New York
July 25, 1991

Respectfully submitted,

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APPENDIX

28 U.S.C. §1257 provides:

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty of statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.
>
> (b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

New York Civil Practice Law and Rules
§5601. Appeals to the court of appeals as of right

(a) Dissent. An appeal may be taken to the court of appeals as of right in an action originating in the supreme court, a county court, a surrogate's court, the family court, the court of claims or an administrative agency, from an order of the appellate division which finally determines the action, where there is a dissent by at least two justices on a question of law in favor of the party taking such appeal.

(b) Constitutional grounds. An appeal may be taken to the court of appeals as of right: 1. from an order of the appellate division which finally determines an action where there is directly involved the construction of the constitution of the state or of the United States; and 2. from a judgment of a court of record of original instance which finally determines an action where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States.

(c) From order granting new trial or hearing, upon stipulation for judgment absolute. An appeal may be taken to the court of appeals as of right in an action originating in the supreme court, a county court, a surrogate's court, the family court, the court of claims or an administrative agency, from an order of the appellate division granting or affirming the granting of a new trial or hearing where the appellant stipulates that, upon affirmance, judgment absolute shall be entered against him.

(d) Based upon nonfinal determination of appellate division. An appeal may be taken to the court of appeals as of right from a final judgment entered in a court of original instance, from a final determination of an administrative agency or from a final arbitration award, or from an order of

the appellate division which finally determines an appeal from such a judgment or determination, where the appellate division has made an order on a prior appeal in the action which necessarily affects the judgment, determination or award and which satisfies the requirements of subdivision (a) or of paragraph one of subdivision (b) except that of finality.

New York Civil Practice Law and Rules
§5602. Appeals to the court of appeals by permission

(a) Permission of appellate division or court of appeals. An appeal may be taken to the court of appeals by permission of the appellate division granted before application to the court of appeals, or by permission of the court of appeals upon refusal by the appellate division or upon direct application. Permission by an appellate division for leave to appeal shall be pursuant to rules authorized by that appellate division. Permission by the court of appeals for leave to appeal shall be pursuant to rules authorized by the court which shall provide that leave to appeal be granted upon the approval of two judges of the court of appeals. Such appeal may be taken:

1. in an action originating in the supreme court, a county court, a surrogate's court, the family court, the court of claims, an administrative agency or an arbitration,

(i) from an order of the appellate division which finally determines the action and which is not appealable as of right, or

(ii) from a final judgment of such court, final determination of such agency or final arbitration award where the appellate division has made an order on a prior appeal in the action which necessarily affects the final judgment, determination or award and the final judgment, determination or award is not appealable as of right pursuant to subdivision (d) of section 5601 of this article; and

2. in a proceeding instituted by or against one or more public officers or a board, commission or other body of public officers or a court or tribunal, from an order of the appellate division which does not finally determine such proceeding, except that the appellate division shall not grant permission to appeal from an order granting or affirming the granting of a new trial or hearing.

(b) Permission of appellate division. An appeal may be taken to the court of appeals by permission of the appellate division:

1. from an order of the appellate division which does not finally determine an action, except an order described in paragraph two of subdivision (a) or subparagraph (iii) of paragraph two of subdivision (b) of this section or in subdivision (c) of section 5601;

2. in an action originating in a court other than the supreme court, a county court, a surrogate's court, the family court, the court of claims or an administrative agency,

(i) from an order of the appellate division which finally determines the action, and which is not appealable as of right pursuant to paragraph one of subdivision (b) of section 5601, or

(ii) from a final judgment of such court or a final determination of such agency where the appellate division has made an order on a prior appeal in the action which necessarily affects the final judgment or determination and the final judgment or determination is not appealable as of right pursuant to subdivision (d) of section 5601, or

(iii) from an order of the appellate division granting or affirming the granting of a new trial or hearing where the appellant stipulates that, upon affirmance, judgment absolute shall be entered against him.

New York Civil Practice Law and Rules

§5514. Extension of time to take appeal or to move for permission to appeal

(a) Alternate method of appeal. If an appeal is taken or a motion for permission to appeal is made and such appeal is dismissed or motion is denied and, except for time limitations in section 5513, some other method of taking an appeal or of seeking permission to appeal is available, the time limited for such other method shall be computed from the dismissal or denial unless the court to which the appeal is sought to be taken orders otherwise.

(b) Disability of attorney. If the attorney for an aggrieved party dies, is removed or suspended, or becomes physically or mentally incapacitated or otherwise disabled before the expiration of the time limited for taking an appeal or moving for permission to appeal without having done so, such appeal may be taken or such motion for permission to appeal may be served within sixty days from the date of death, removal or suspension, or commencement of such incapacity or disability.

(c) Other extensions of time; substitutions or omissions. No extension of time shall be granted for taking an appeal or for moving for permission to appeal except as provided in this section, section 1022, or section 5520.

Chapter 167 of the New York Laws of 1991, §§1-3.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 17 of chapter 576 of the laws of 1974, amending the emergency housing rent control law relating to the control of and stabilization of rent in certain cases, as amended by chapter 144 of the laws of 1989, is amended to read as follows:

§ 17. Effective date. This act shall take effect immediately and shall remain in full force and effect until and including the fifteenth day of June, [1991] *1993*, except that sections two and three shall take effect with respect to any city having a population of one million or more and section one shall take effect with respect to any other city, or any town or village whenever the local legislative body of a city, town or village determines the existence of a public emergency pursuant to section 3 of the emergency tenant protection act of nineteen seventy-four, as enacted by section four of this act, and provided that the housing accommodations subject on the effective date of this act to stabilization pursuant to the New York City rent stabilization law of nineteen hundred sixty-nine shall remain subject to such law upon the expiration of this act.

Section 2. Section 2 of chapter 329 of the laws of 1963, amending the emergency housing rent control law relating to the recontrol of rents in certain cases, as amended by chapter 144 of the laws of 1989, is amended to read as follows:

§ 2. This act shall take effect immediately and the provisions of subdivision 6 of section 12 of the emergency housing rent control law, as added by this act, shall remain in full force and effect until and including June 15, [1991] *1993*.

Section 3. Subdivision 2 of section 1 of chapter 274 of

the laws of 1946, constituting the emergency housing rent control law, as amended by chapter 144 of the laws of 1989, is amended to read as follows:

§ 2. The provisions of this act, and all regulations, orders and requirements thereunder shall remain in full force and effect until and including June 15, [1991] *1993*.

LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1991

No. 20

To amend the administrative code of the City of New York, in relation to continuing the stabilization of rents in certain housing accommodations.

Be it enacted by the Council as follows:

Section 1. Section 26-502 of the administrative code of the City of New York, as amended by local law number 18 for the year 1988, is amended to read as follows:

§ 26-502. Additional findings and declaration of emergency. The council hereby finds that a serious public emergency continues to exist in the housing of a considerable number of persons within the City of New York and will continue to exist after April first, nineteen hundred [eighty-eight] *ninety-one* and hereby reaffirms and repromulgates the findings and declaration set forth in section 26-501 of this title.

§ 2. Section 26-520 of such code, as amended by local law number 18 for the year 1988, is amended to read as follows:

§ 26-520 Expiration date. This chapter shall expire on April first, nineteen hundred [ninety-one] *ninety-four* unless rent control shall sooner terminate as provided in subdivision three of section one of the local emergency housing rent control law.

§ 3. This local law shall take effect immediately.